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November 5, 2013

BY ECF AND FAX

Hon. Paul G. Gardephe
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

**Re: Novel Commodities S.A. v. QBE Insurance Corporation
(Index No. 11-CV-6339)**

Dear Judge Gardephe:

We represent Defendant QBE Insurance Corporation ("QBE") in the above-referenced action. We write in response to the letter by Novel Commodities S.A.'s ("Novel's") counsel dated November 5, 2013 (Dkt. No. 99) opposing QBE's request for leave to make payment into the Court of the Judgment in this matter.

Contrary to Novel's assertions, QBE's request is based not merely on the *Polish Steamship* and *Wind Shipping* Garnishment Orders, but also has been precipitated by Restraining Notices that, as we previously advised, were served by Novel on QBE and its bank, JP Morgan.¹

As respects the Garnishment Orders, Novel asks this Court to deny QBE's Rule 67 request based on mere speculation that the *Polish Steamship* and *Wind Shipping* cases may settle. This is an insubstantial basis to deny QBE's good faith attempt to pay the Judgment in full into the Court.

Further, with respect to the *Wind Shipping* matter, Novel also asks this Court to make a determination on the merits regarding whether the Garnishment Order in that case is valid. That issue, however, is not properly before this Court.

¹ Although the JP Morgan Restraining Notice has been withdrawn by Novel, it has been withdrawn on a without prejudice basis.



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Finally, contrary to Novel's assertion, there is a substantial difference between QBE's request for leave to deposit the Judgment into the Court and having QBE hold the funds in its own account. Issuing the order proposed by QBE will lead to a full and final payment of the Judgment extinguishing, among other things, all post-judgment interest obligations on the part of QBE.

Based upon the foregoing and our earlier letters of today, QBE again respectfully requests that Your Honor grant QBE's application for leave to pay into Court under Rule 67 and for an immediate telephone call tomorrow between Your Honor and the parties.

We thank Your Honor for your time and consideration.

Respectfully submitted,

A handwritten signature in blue ink that reads "Stephen M. Kennedy". A small "JWM" is written above the "y" in "Kennedy".

Stephen M. Kennedy

Enclosure

cc: Michael T. Sullivan, Esq. (via ECF)
Karen E. Abravanel, Esq. (via ECF)